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8 Attorneys for Defendants,  
WTAIWAN SHIN YEH ENTERPRISE CO., LTD., SHIN  
CREST PTE, LTD. and WAL-MART STORES, INC.

9  
10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

12 ANDREW CLAPPER and CYNTHIA ) Case No. 2:14-cv-02183-RCJ-CWH  
13 JACQUELINE GUTIERREZ, individually and as )  
Parents and Natural Guardians of DANIEL )  
14 SANTOYO and ISABELLA CLAPPER, minor )  
children, )  
Plaintiffs, )  
vs. )  
15 )  
16 WAL-MART STORES, INC., a Delaware )  
corporation; TAIWAN SHIN YEH )  
17 ENTERPRISE CO., LTD., a foreign entity; SHIN )  
CREST PTE, LTD., a foreign entity; DOES I-X; )  
and XI-XX, inclusive, )  
Defendants. )  
20 \_\_\_\_\_ )  
21

**STIPULATED PROTECTIVE ORDER AND CONFIDENTIALITY AGREEMENT**

22 Upon stipulation of the parties, it is hereby ORDERED that all documents and other materials  
23 produced by Defendants voluntarily or by Order of the Court, have been and will be produced  
24 under the following conditions.

25 I.  
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27 A. The parties recognize that discovery in this matter may call for the production of  
materials containing confidential and proprietary business, technical and other commercially  
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1 sensitive information and that the producing party has a protected proprietary and property interest  
 2 in those materials.

3       B. If Defendants have a good faith factual and legal basis for asserting a privilege or  
 4 exemption from public disclosure, Defendants may designate as "CONFIDENTIAL" the portion  
 5 of any produced material they consider subject to their claim of privilege or exemption in  
 6 accordance with Section I.E., below, and relying upon the terms of this order in producing said  
 7 information. Such "CONFIDENTIAL" designation shall make the designated portions of those  
 8 produced materials and all copies, prints, summaries, translations, or other reproductions of such  
 9 material subject to this Stipulated Protective Order. This Stipulated Protective Order shall also  
 10 apply to the specific pages and lines from oral depositions and discovery responses that are  
 11 designated as "CONFIDENTIAL" by the producing party in accordance with Section I.E., below.

12       C. When used in this Stipulated Protective Order, the word "CONFIDENTIAL" means  
 13 designated commercially sensitive business information, and other confidential and/or proprietary  
 14 information of Defendants or their affiliates and parent companies.

15       D. When used in this Stipulated Protective Order, the term "CONFIDENTIAL  
 16 MATERIAL" means all designated written materials, computer documents, claims histories, claims  
 17 files, adjustment data, videotapes, Answers to Interrogatories, Responses to Requests for  
 18 Production of Documents, deposition transcripts, documents produced by the producing party to  
 19 any governmental agency or body or any time deemed by a governmental agency to be confidential  
 20 under Federal or State law which discloses "CONFIDENTIAL" information. Nothing in the  
 21 Stipulated Protective Order, however, shall be interpreted to require the production of any trade  
 22 secret information as defined in Nevada Revised Statute 600A.010 et. seq. or otherwise.

23       E. In order to designate a portion of any document or other printed material as  
 24 "CONFIDENTIAL," Defendants shall mark the designated pages of the material with the word  
 25 "CONFIDENTIAL" in a manner that does not cover, obscure, or impair the legibility of any  
 26 information contained within the material but which makes it difficult to remove the designation.  
 27 In order to designate a computer database, disc, compact disc, drive, or other electronically  
 28 recorded material as "CONFIDENTIAL," the producing party shall mark the case or envelope

1 containing the material with the word "CONFIDENTIAL." Documents printed from such  
 2 electronic media shall be marked the same as documents originally produced on paper.

3       F. In the case of a deposition or oral examination, counsel for Defendants may, during  
 4 the deposition, designate on the record that testimony involving "CONFIDENTIAL MATERIAL"  
 5 be held "CONFIDENTIAL" and the entire deposition transcript will be treated as  
 6 "CONFIDENTIAL" until counsel for Defendants receives a transcript of the deposition and for 30  
 7 days thereafter. In the event that Defendants' counsel, during the deposition, does not designate on  
 8 the record that testimony involving "CONFIDENTIAL MATERIAL" be held as  
 9 "CONFIDENTIAL," Defendants do not waive their right to designate the deposition testimony as  
 10 "CONFIDENTIAL" upon receipt of the deposition transcript. After receipt of the deposition  
 11 transcript, the producing party shall identify by page and line the portion of the material that the  
 12 producing party intends to designate as "CONFIDENTIAL" in a written letter served to all counsel  
 13 of record within 30 days after receiving the written deposition transcript from the court reporter.  
 14 Only the portions of the deposition transcript designated by the producing party during this time  
 15 period shall remain "CONFIDENTIAL". The parties stipulate that the court reporter or  
 16 videographer for any such depositions will be given a copy of this Stipulated Protective Order, will  
 17 execute an acknowledgement thereof, and shall not disclose to anyone (other than the "COVERED  
 18 PERSONS" as defined in Section 1.F below) any deposition testimony or exhibits in this lawsuit.

19       G. When used in this Stipulated Protective Order, the term "COVERED PERSONS"  
 20 includes only the following: (1) the Court and all Court personnel; (2) the named parties in this  
 21 litigation, (3) retained counsel for all of the parties in this litigation, including members of  
 22 counsel's legal or support staff (e.g. in-house investigators, secretaries, legal assistants, paralegals  
 23 and law clerks), to the extent reasonably necessary for such persons to render assistance in this  
 24 litigation; (4) experts retained or consulted by counsel for any party to assist in the preparation,  
 25 prosecution, or evaluation of this litigation; and (5) the Court, the Court's staff, witnesses, and the  
 26 jury in this case.

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1 II.

2 Absent a further Order of the Court, those documents marked as "CONFIDENTIAL  
3 MATERIAL" as described in Sections I.C. and I.D. shall not be used for any purpose other than the  
4 prosecution or defense of this captioned action, and shall not be shown, disseminated or disclosed  
5 in any manner to anyone other than "COVERED PERSONS" as defined in Section I.G. without the  
6 prior written agreement of the producing party or Order of the Court after due notice to the  
7 producing party.

8 III.

9 Before showing or divulging any "CONFIDENTIAL MATERIAL" or "CONFIDENTIAL  
10 INFORMATION" to any "COVERED PERSON" other than the Court and Court personnel,  
11 counsel shall first obtain from each person a signed "WRITTEN ASSURANCE" in the form  
12 attached hereto as Exhibit "A". Counsel shall maintain a list of all recipients of "CONFIDENTIAL  
13 MATERIAL" to whom this paragraph applies and the original of every "WRITTEN  
14 ASSURANCE" required pursuant to this paragraph. At the conclusion of the litigation, the parties  
15 shall forward to counsel for the producing party each and every signed "WRITTEN  
16 ASSURANCE" and a list of all recipients of "CONFIDENTIAL MATERIALS"; however, with  
17 regard to consultant(s) not identified as expert(s) in this matter, counsel need only produce a copy  
18 of the "WRITTEN ASSURANCE" redacted to remove any reference to the identity of the  
19 consultant(s).

20 IV.

21 A. If any "CONFIDENTIAL MATERIAL" is filed with this Court, including any  
22 pleading incorporating "CONFIDENTIAL MATERIAL," the portion of such filing containing  
23 "CONFIDENTIAL MATERIAL" shall be filed in a sealed envelope on which the following legend  
24 shall prominently appear:

25 ANDREW CLAPPER et al vs. WAL-MART STORES, INC., et al, Case No. 2:14-cv-  
26 02183-RCJ-CWH - This Envelope contains CONFIDENTIAL documents or other material  
27 filed by Defendants. It shall not be opened nor the contents thereof displayed or revealed  
except by the Order of this Court.

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1       B.     “CONFIDENTIAL MATERIAL” may be introduced into evidence, if otherwise  
2 admissible, provided that it may only be done so during a hearing or trial when counsel for  
3 Defendants are present and maintain the right to seek in camera treatment of such documents or  
4 materials. Further, the Court may take such steps as it deems reasonably necessary to preserve the  
5 confidentiality of the documents or information.

6 C. All writings submitted to or filed with the Court in connection with any pre-trial  
7 proceeding that contains, set forth, summarizes, or otherwise discloses "CONFIDENTIAL  
8 MATERIAL" shall be under seal and such documents shall not be publicly available, except by  
9 further Order of this Court.

10 D. If any party or person who has obtained “CONFIDENTIAL MATERIAL” under the  
11 terms of this Stipulated Protective Order receives a subpoena or other legal process commanding  
12 the production of any such “CONFIDENTIAL MATERIAL,” such party or person shall promptly  
13 notify counsel for Defendants of the service of the subpoena and shall promptly transmit a copy of  
14 the subpoena to counsel for Defendants. Defendants will have ten days from the date of confirmed  
15 receipt of the subpoena by their counsel to intervene to request that the subpoena be quashed. If a  
16 motion to quash is filed, the party or person receiving the subpoena shall not produce any  
17 “CONFIDENTIAL MATERIAL” in response to the subpoena without either the prior written  
18 consent of counsel for Defendants or an order of a Court of competent jurisdiction.

V.

20 Certain parties could produce large volumes of materials in discovery in this matter, including  
21 large collections of materials in the form of paper or electronic format repositories, increasing the  
22 likelihood that information protected from discovery by certain privileges or immunities, or  
23 "CONFIDENTIAL MATERIAL" not marked as such, may be produced inadvertently. Therefore,  
24 the following provisions shall apply to the production of information in this case.

25 A. Inadvertent production of documents subject to work product immunity, the  
26 attorney-client privilege, the trade secret and proprietary business information privilege, or other  
27 legal privilege, rule or doctrine protecting information from discovery shall not constitute a waiver  
28 of the immunity or privilege either from the inadvertently produced document or its subject matter

1 (so-called “subject matter waiver”). The producing party shall notify the receiving party in writing  
 2 of such inadvertent production promptly upon becoming aware of it.

3       B. If reasonably prompt notification is made, such inadvertently produced documents  
 4 and all copies thereof, as well as all notes or other work product reflecting the contents of such  
 5 materials, shall be returned to the producing party or destroyed, and such returned material shall be  
 6 deleted from any litigation-support or database. No use shall be made of such documents during  
 7 discovery or trial nor shall they be disclosed to anyone who was not given access to them before  
 8 the request to return and/or destroy said documents.

9       C. If any party contends that the notification of inadvertent production was not  
 10 “reasonably prompt”, it shall notify the producing party in writing, and will make no further use of  
 11 such documentation pending a resolution of its status by the Court. It shall be the burden of the  
 12 producing party to move for a Protective Order regarding the inadvertent production, and to  
 13 demonstrate both that the production was inadvertent, that reasonable diligence was exercised to  
 14 identify the inadvertently produced information, and that notification was made with reasonable  
 15 promptness after discovery of the inadvertent production.

16       D. The party returning or destroying such documents may move the Court for an Order  
 17 compelling production of the material, but such motion shall not assert the fact or circumstances of  
 18 the inadvertent production as a ground for entering such an Order.

19       E. Inadvertent failure to designate produced materials as “CONFIDENTIAL  
 20 MATERIAL,” pursuant to the terms of Section I above shall not constitute a waiver of the right to  
 21 designate such materials “CONFIDENTIAL,” provided that the producing party shall notify the  
 22 receiving party of such inadvertent failure to designate promptly upon becoming aware of it.

23       F. If reasonable notification is made of such failure to designate, such inadvertently  
 24 non-designated documents and all copies thereof, shall be returned to the producing party or  
 25 destroyed and such material shall be deleted from any litigation-support or database. No use shall  
 26 be made of such non-designated documents during discovery or at trial nor shall they be disclosed  
 27 to anyone who was not given access to them before the request to return or destroy.

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1 G. Any inadvertently produced document or documents provided to the Court pursuant  
2 to Section V shall not be considered "court records" as defined in Nevada Revised Statutes Section  
3 231.001 et. seq. and similar statutes.

VI.

5 Within 90 days after the final disposition of this lawsuit, by settlement, trial or appeal, counsel  
6 for the parties shall deliver to counsel for the producing party all “CONFIDENTIAL MATERIAL”  
7 including any copies (except those determined by the Court or agreed by the parties not to be  
8 “CONFIDENTIAL”) which have been disseminated to any “COVERED PERSONS,” except that  
9 parties and their counsel may retain pleadings, memoranda, declarations, affidavits, non-  
10 “CONFIDENTIAL” portions of deposition transcripts, notes, summaries, expert reports, trial and  
11 hearing transcripts, or other attorney work product which refers to or describes “CONFIDENTIAL  
12 MATERIAL.” Deposition transcripts need not be returned if all “CONFIDENTIAL” portions have  
13 been destroyed or obliterated.

VII.

15 In the event that counsel for any party, in good faith, disputes the designation of any document  
16 as "CONFIDENTIAL," he or she shall notify counsel for Defendants in writing within thirty days  
17 of the receipt of "CONFIDENTIAL MATERIAL" specifying the material that is challenged.  
18 Defendants would then bear the responsibility of seasonably applying to the Court for a  
19 determination that the specified "CONFIDENTIAL MATERIAL" is protected pursuant to this  
20 Stipulated Protective Order. Until a final determination by the Court, any disputed document shall  
21 be treated as "CONFIDENTIAL MATERIAL" pursuant to this Stipulated Protective Order.  
22 Nothing in the Stipulated Protective Order shall be construed to alter or shift the burdens of proof  
23 and persuasion as they apply to the assertion of privileges or exemptions from public disclosure.

VIII.

25 A. This Stipulated Protective Order shall not preclude the parties from exercising any  
26 rights or raising any objections otherwise available to them under the rules of discovery or  
27 evidence. Nothing contained in this Stipulated Protective Order shall, in any manner, change, alter  
28 or modify any of the rights of the producing party or any other party under any other Orders issued

1 by any other courts concerning the protection of "CONFIDENTIAL MATERIALS" and  
2 "CONFIDENTIAL" information. Nothing in this Stipulated Protective Order shall limit the rights  
3 of the parties to apply for further Protective Orders or for modification of the terms of this  
4 Stipulated Protective Order.

5       B. This Stipulated Protective Order may not be waived, modified, abandoned, or  
6 terminated, in whole or in part, except by an instrument in writing signed by the parties, or by  
7 Order of the issuing Court. If any provision of this Stipulated Protective Order shall be held invalid  
8 for any reason whatsoever, the remaining provisions shall not be affected thereby.

9       C. This Stipulated Protective Order shall be binding upon the parties hereto, upon their  
10 attorneys, and upon the parties' and their attorney's successors, executors, personal representatives,  
11 administrators, heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents,  
12 independent contractors, or other persons or organizations, over which they have control.

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IX.

2 At the conclusion of this lawsuit, the Court shall retain jurisdiction of this lawsuit for the  
3 enforcement of this Stipulated Protective Order.

4 This Protective Order is agreed to by and between the parties.

5 | BREMER WHYTE BROWN & O'MEARA LLP

Jared Clinton

By: \_\_\_\_\_  
NELSON L. COHEN, ESQ.  
Nevada Bar No. 7657  
JARED G. CHRISTENSEN, ESQ.  
Nevada Bar No. 11538  
Attorneys for Defendants

By: /s/ Martin A. Little  
MARTIN A. LITTLE, ESQ.  
Nevada Bar No. 7067  
Attorney for Plaintiffs

IT IS SO ORDERED.

C.W. Hoffman, Jr.  
United States Magistrate Judge  
Dated: April 17, 2015

1                   **CERTIFICATE OF SERVICE**  
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2                   The undersigned hereby certifies that on the 16th day of April, 2015, **STIPULATED**  
3 **PROTECTIVE ORDER AND CONFIDENTIALITY AGREEMENT** was served on all parties  
4 or persons requesting notice via the United State District Court CM/ECF system.  
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8                   An Employee of Bremer Whyte Brown & O'Meara, LLP  
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